



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

NOV 30 2010

Mr. Henri C. deLaunay
Environmental Manager
Hilcorp Energy
P. O. Box 61229
Houston, Texas 77208-1229

Re: Expedited Spill Settlement Agreement - Final Order
Docket No. CWA-06-2011-4501
NRC: 935528
Jackson County, TX

Dear Mr. Johnson:

Enclosed for your records is a copy of the fully executed Complaint and Expedited Settlement Agreement (ESA) for the 3/30/2010 spill from your facility in Jackson County, TX.

Please be advised, if the required penalty payment has not been submitted, it must be submitted in accordance with the terms set forth in the ESA.

If you have any questions regarding this matter, please do not hesitate to call me. I may be reached in Dallas at (214) 665-8489.

Sincerely yours,

Nelson Smith
Prevention and Response Branch

Enclosure

9689326





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6, 1445 ROSS AVENUE, DALLAS, TEXAS 75202-2733
EXPEDITED SPILL SETTLEMENT AGREEMENT

DOCKET NO. CWA-06-2011-4501

On March 30, 2010

At: Hilcorp Energy, Jackson County, TX (Respondent) discharged 100 barrels of well fluids in violation of Section 311(b)(3) of the Clean Water Act (the Act), as noted on the attached FINDINGS and ALLEGED CIVIL VIOLATIONS FORM (Form), which is hereby incorporated by reference.

The parties are authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), as amended by the Oil Pollution Act of 1990, and by 40 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$5000.00.

This settlement is subject to the following terms and conditions:

EPA finds the Respondent's conduct is subject to the discharge prohibition of Section 311(b)(3) of the Act, as described in the statute and further described by 40 CFR § 110.3. The Respondent admits he/she is subject to Section 311(b)(3) and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent does not contest the Findings, and waives any objections it may have to EPA's jurisdiction. The Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it has investigated the cause of the spill, it has cleaned up the spill pursuant to the federal requirements, and it has taken corrective actions that will prevent future spills. The Respondent also verifies that it has sent a certified check for \$5000.00, payable to "Environmental Protection Agency," to: "USEPA, Fines & Penalties, P.O. Box 979077, St. Louis, MO 63197-9000" and Respondent has noted on the penalty payment check "Spill Fund-311" and the docket number of this case, "CWA-06-2011-4501."

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

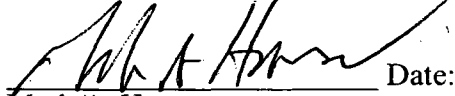
If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

After this Expedited Settlement becomes effective, EPA will

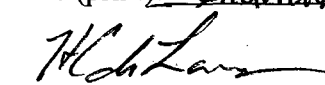
take no further action against the Respondent for the violations of the Section 311(b)(3) of the Act described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by the Respondent of Section 311(b)(3) of the Act or of any other federal statute or regulation. By its first signature, EPA ratifies the Inspection Findings and Alleged Violations set forth in the Form.

This Expedited Settlement is binding on the parties signing below, and is effective upon the Superfund Division Director's signature.

APPROVED BY EPA:


 Date: 6 OCT 2010
Mark A. Hansen
Acting Associate Director
Prevention and Response Branch
Superfund Division

APPROVED BY RESPONDENT:

Name (print): Henri C. deLamay
Title (print): Environmental Manager
 Date: 11/3/10
Signature: _____

The estimated cost of the clean-up and corrective action is
\$25,000.00

IT IS SO ORDERED:

 Date: 11/23/10
Samuel Coleman, P.E.
Director
Superfund Division

REGIONAL HEARING CLERK
EPA REGION VI
ORREV.11/18/99 REV 5/10/01; 9/19/01-11/8/01;1/22/02
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FINDINGS AND ALLEGED CIVIL VIOLATIONS

1. Hilcorp Energy is a firm qualified to do business in the State of Texas with a place of business located in Houston, Texas. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7).

2. Respondent is the owner/operator of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), an oil production facility, which is located in Jackson County, TX (facility).

3. Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

4. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. §110.3 to include discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines.

5. On March 30, 2010, Respondent discharged 100 barrels of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1, from its facility into or upon a wetland adjacent to Venado Lake and adjoining shorelines.

6. The wetland adjacent to Venado Lake enters Venado Lake; thence Lavaca Bay and is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.

7. Respondent's March 30, 2010, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the wetland adjacent to Venado Lake and adjoining shorelines and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.

8. Respondent's March 30, 2010, discharge of oil from its facility into or upon the wetland adjacent to Venado Lake and adjoining shorelines in a quantity that has been determined may be harmful under 40 C.F.R. §110.3 violated Section 311(b)(3) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act, and 40 CFR 19.4, the Respondent is liable for civil penalties of up to \$11,000 per violation, up to a maximum of \$32,500.

Docket No. CWA-06-2011-4501

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing "Consent Agreement and Final Order," issued pursuant to 40 C.F.R. 22.13(b), was filed on 11-24, 2010, with the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy by certified mail,
return receipt requested:

NAME: Henri C. deLaunay
ADDRESS: P. O. Box 61229
Houston, Texas 77208-1229

Frankie Markham

Frankie Markham
OPA Enforcement Administrative Assistant

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REGIONAL HEARING CLERK
EPA REGION VI

Hilcorp Energy Company

Post Office Box 61229
Houston, TX 77208-1229

November 5, 2010

1201 Louisiana
Suite 1400
Houston, TX 77002

Phone: 713/209-2400
Fax: 713/209-2478



OPA Enforcement Coordinator
U.S. Environmental Protection Agency
Region 6 (6SF-PC)
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Expedited Spill Settlement Agreement, Docket No. **CWA-06-2011-4501**
Oil Spill in Jackson County, Texas on or about March 30, 2010

Dear Coordinator:

Enclosed is Hilcorp Energy Company's ("Hilcorp") executed Settlement Agreement (the "Agreement") in the above-referenced matter. Although Hilcorp accepts EPA's settlement offer as to this spill and although we have executed the Agreement to resolve this matter, Hilcorp respectfully observes in relation to Paragraph 5 of the "Findings and Alleged Civil Violations" (which states that "Respondent discharged 100 barrels of oil") that this hundred barrel spill included very little oil and was composed almost entirely of produced water.

Hilcorp understands that, under Section 311 of the Clean Water Act and 40 C.F.R. Part 110, EPA is taking the position that a mixture of produced water and oil is all "oil" as a matter of law under Part 110 and that EPA has relied on that position in the way it drafted Paragraph 5. Without that understanding, however, we are concerned that the Agreement – which we assume will be part of the public record – could be misleading, implying that the spill actually involved one hundred barrels of crude oil. As EPA is aware, it did not.

Hilcorp believes a spill of actual oil is factually and legally distinguishable from a similarly-sized spill of other materials that happen to contain traces of oil. Such distinctions could be relevant to environmental harm, culpability, penalty calculations, or other potential defenses. Notably, other EPA release reporting programs recognize the importance of such distinctions in such circumstances. *See* 40 C.F.R. § 302.6(b) (providing for the calculation of "reportable quantities" in reference to the amount of each actual "hazardous substance" in a mixture).

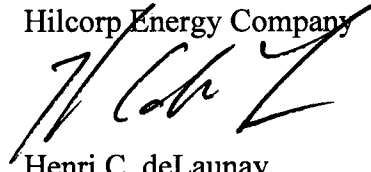
Hilcorp's acceptance of EPA's settlement offer and its entry into this Agreement with EPA respecting this particular spill is not an admission by Hilcorp that EPA's calculations and descriptions of the spill's size and composition, as reflected in Paragraph 5, were determined correctly or that our assent to this settlement constitutes a precedent as to Hilcorp's position on any future spill or release. By executing the Agreement, Hilcorp does not waive any factual or legal defense that may apply in any other action or matter.

OPA Enforcement Coordinator
November 5, 2010
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Should you have any questions, please contact me at (713) 289-2671.

Very truly yours,

Hilcorp Energy Company

A handwritten signature in black ink, appearing to read "H. deLaunay", written over the company name.

Henri C. deLaunay
Environmental Manager

cc: Timothy A. Wilkins, Bracewell & Giuliani, LLP